

The commission proposes the repeal of §§113.31-113.37, 113.41-113.48, 113.51-113.54, and 113.61-113.68, concerning Lead from Stationary Sources and a proposed revision to the State Implementation Plan (SIP) concerning these repeals. The commission also proposes new §113.55, concerning Radon Emissions from Phosphogypsum Stacks (40 CFR 61, Subpart R); a new division concerning Radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPs); and to change the title of Subchapter B from “Lead from Stationary Sources” to “National Emission Standards for Hazardous Air Pollutants (FCAA §112, 40 CFR 61).

EXPLANATION OF PROPOSED RULES

This proposal is part of the regulatory reform effort. Regulatory reform projects identify rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission’s mission; or are duplicated, unnecessary, or inconsistent. This proposal is also a request for delegation of authority to implement one of the Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) NESHAPs.

The proposed repeals will eliminate lead rules which no longer apply to active lead sources. The lead rules for El Paso were adopted February 17, 1984, and for Dallas were adopted May 18, 1984, as a result of a primary lead smelter (ASARCO) located in El Paso County, and two secondary lead smelters (battery recycling facilities) located in Dallas County, which caused the counties to violate the National Ambient Air Quality Standard for lead. Subsequently, the lead processes in all three facilities were shut down and the equipment dismantled. The remaining lead emitting process (a copper

process) in the El Paso facility is under very rigid permit control (New Source Review (NSR) permit number 20345) for lead emissions. Fugitive lead emissions from the ASARCO plant are effectively controlled by existing particulate rules in Chapter 111 (concerning Control of Air Pollution from Visible Emissions and Particulate Matter) which apply throughout El Paso. The fugitive lead emissions from outdoor storage piles are controlled by NSR permit number 4151 as well as controls found in 30 TAC §111.143, concerning Materials Handling. The fugitive lead emissions from the grounds and roads of the plant are controlled by permit number 20345 as well as controls found in 30 TAC §111.147(a)(1), concerning Roads, Streets, and Alleys. One of the sites in Dallas (known as the Dixie Metals Company or the Exide Corporation) has been remediated under the federal Superfund program, and the other site in Dallas (Murph Metals, Incorporated, a subsidiary of RSR Corporation) is proposed for a state and federally supported remediation. There are no other operational lead smelters located, or anticipated to be located, within El Paso or Dallas County; therefore, the subject rules are being proposed for repeal under rule streamlining.

The proposed repeal of the existing Subchapter B, concerning Lead from Stationary Sources will be concurrent with a proposed new Subchapter B, concerning National Emission Standards for Hazardous Air Pollutants (FCAA §112, 40 CFR 61). The new Subchapter B will complement the existing Subchapter C, concerning National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63), which are requirements of the 1990 Federal Clean Air Act Amendments. Unlike other Part 61 NESHAPs, Texas was not automatically delegated authority to implement any Radionuclide NESHAP. Part 61, Subpart R, Radon Emissions from Phosphogypsum

Stacks, is actually one of seven standards that apply to various types of federal or industrial facilities which have potential emissions of radioactive substances (radionuclides). The United States Environmental Protection Agency (EPA) has requested that Texas take delegation of Subpart R. For the existing facilities to be in compliance under Part 61, Subpart R, the commission would be notified in advance of a Radon test so it may be observed. Ninety days after the test, the report would be sent to the commission. The test requires a statistical sampling approach which is unique from other requirements associated with air regulations. The operators will also submit an annual report to both the EPA and the appropriate commission regional office.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed revisions are in effect there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the rules. All lead processes in Dallas County and El Paso County have been shut down and therefore the need for Subchapter B no longer exists. Only a copper process which emits lead remains in an El Paso facility and is under very rigid permit control for lead emissions. The proposed new Subchapter B, concerning Radon Emissions from Phosphogypsum Stacks, will require review of existing records at facilities already being inspected by regional offices.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated from enforcement of and compliance with these sections will be a reduction in the emission of hazardous air pollutants, increased consistency between federal and state air quality regulations, and more cost effective implementation and enforcement of air quality standards. The economic impact of complying with the standards as they are promulgated will vary for each standard and for each industry subject to the standards; however, no additional economic impact to affected owners and operators is anticipated due to the state's adoption of the federal requirements or the delegation of enforcement to the state. There are no additional anticipated economic costs to persons or small businesses required to comply with the sections as proposed. All known facilities that the Radionuclide NESHAP would be applicable under do not meet the definition of small business as defined in Texas Government Code, §2006.002. The Radon Emissions from Phosphogypsum Stacks (40 CFR 61, subpart R) rule has been enforced by the EPA since 1992 and the state is only seeking delegation through this rule. Any financial impact that would be expected from this rule would be minimal. The repeal is removing requirements and therefore should have no economic impacts.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The repeal of the Subchapter B rules will not change the current level of protection of the environment. The

proposed new rule does protect the environment and reduces risks to human health from environmental exposure, but does not meet the definition of a major environmental rule because the obligations have already been established by federal law and thus are not new requirements. The repeals and proposed new rule should not adversely affect the economy in a material way because the identified affected facilities are currently meeting the federal standard being enforced by EPA. Therefore, this does not meet the definition of a “major” environmental rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal lead rules because there is no longer a need due to the shut down and dismantling of the affected facilities. The adoption by reference of 40 CFR 61, Subpart R will give Texas the authority to enforce the federal standard. Promulgation and enforcement of this rulemaking will not affect private real property because the rules being proposed for repeal apply to non-existent or decommissioned facilities, and the rules being proposed for adoption already exist at the federal level and are currently enforced by EPA.

COASTAL MANAGEMENT PLAN

The commission has determined that the proposed rulemaking concerning the 40 CFR 61, Subpart R NESHAP relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code,

§§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The repeal of the lead rules should not relate due to the nonexistence of applicable sources in Texas. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations in 40 CFR, and is therefore consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on the proposal will be held in Austin on October 26, 1998 at 10:00 a.m. in Building F, Room 5108 of the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing;

however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log No. 98006-113-AI. Comments must be received by 5:00 p.m. on October 26, 1998. For further information, please contact Phil Harwell of the Air Policy and Regulations Division, Office of Policy and Regulatory Development, (512) 239-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to propose the adoption by reference of a federal standard.

The proposed repeals do not implement any new state or federal requirement, and are part of the regulatory reform effort.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

1. NONFERROUS SMELTERS IN EL PASO COUNTY

§§113.31 - 113.37

§113.31. Maintenance and Operation of Control Equipment.

§113.32. Areas Accessible to the General Public.

§113.33. Control of Fugitive Dust.

§113.34. Materials Handling and Transfer.

§113.35. Smelting of Lead.

§113.36. Smelting of Copper and Zinc.

§113.37. Lead Emissions Limits for Stacks.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

2. LEAD SMELTERS IN DALLAS COUNTY

§§113.41 - 113.48

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to propose the adoption by reference of a federal standard.

The proposed repeals do not implement any new state or federal requirement, and are part of the regulatory reform effort.

§113.41. Maintenance and Operation of Control Equipment.

§113.42. Storage of Lead-Containing Materials.

§113.43. Transport of Materials.

§113.44. Fugitive Emissions from Lead Processes.

§113.45. Battery or Lead Reclaiming Operations.

§113.46. Lead Emission Limits for Reverberatory Furnaces and Blast Furnaces.

§113.47. Control of Fugitive Dust.

§113.48. Additional Measures to Reduce Lead Emissions.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

3. ALTERNATE CONTROLS

§§113.51 - 113.54

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to propose the adoption by reference of a federal standard.

The proposed repeals do not implement any new state or federal requirement, and are part of the regulatory reform effort.

§113.51. Alternate Means of Control in El Paso County.

§113.52. Alternate Emission Reductions in El Paso County.

§113.53. Alternate Means of Control in Dallas County.

§113.54. Alternate Emission Reductions in Dallas County.

SUBCHAPTER B : NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR

POLLUTANTS (FCAA §112, 40 CFR 61)

RADIONUCLIDE NESHAPS

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexistent sources and propose the adoption by reference of a federal standard. The new section is also proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air which the new proposed rule will accomplish by regulating emissions from phosphogypsum stacks. Under TCAA, §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air, the new proposed rule is one of many national standards developed for the overall control of hazardous air pollutants in the United States. The new rule is also proposed under TCAA, §382.016, which authorizes the commission to require monitoring requirements and examination of records and therefore is consistent with the referenced requirements.

The authority for delegation of 40 CFR Part 61 for both the implementation and enforcement of NESHAPs is contained in §112(l) of the 1990 Federal Clean Air Act Amendments and 40 CFR 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities.

§113.55. Radon Emissions from Phosphogypsum Stacks (40 CFR 61, Subpart R).

The National Emissions Standards for Radon Emissions from Phosphogypsum Stacks as specified in 40 CFR 61, Subpart R, as promulgated on June 3, 1992, are incorporated by reference.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

4. COMPLIANCE AND CONTROL PLAN REQUIREMENTS

§§113.61 - 113.68

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to propose the adoption by reference of a federal standard.

The proposed repeals do not implement any new state or federal requirement, and are part of the regulatory reform effort.

§113.61. Compliance with Other Rules in El Paso County.

§113.62. Dates for Control Plan Submission and for Final Compliance in El Paso County.

§113.63. Control Plan Procedure in El Paso County.

§113.64. Reporting Procedure in El Paso County.

§113.65. Compliance with Other Rules in Dallas County.

§113.66. Dates for Control Plan Submission and for Final Compliance in Dallas County.

§113.67. Control Plan Procedure in Dallas County.

§113.68. Reporting Procedure in Dallas County.